

JAN 16 '02 10:35 AM

SURFACE TRANSPORTATION BOARD

55 East Monroe Street

Suite 4200

Chicago, IL 60603-5803

312-346-8000

fax 312-269-8869

www.seyfarth.com

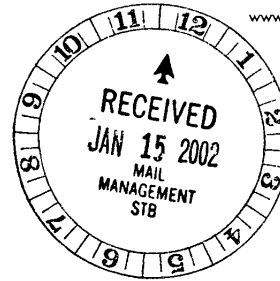
Writer's direct phone

312-269-8892

Writer's e-mail

tvanlonkhuyzen@seyfarth.com

January 14, 2002



**VIA FEDERAL EXPRESS**

Mr. Vernon Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, D.C. 20423

**Re: Recordation of Interim Use Agreement**

Dear Mr. Williams:

I have enclosed one (1) original and two (2) certified copies of the document described below, to be recorded pursuant to Section 11301 of Title 49 of the United States Code and the regulations adopted thereto.

The document is an Interim Use Agreement governing the interim use of certain equipment by the Debtor (as set forth below), a primary document, dated as of December 17, 2001.

The names and addresses of the parties to the document are as follows:

Secured Party: Thrall Trinity Freight Car, Inc.  
2521 State Street  
Chicago Heights, Illinois 60411

Debtor: Sid Richardson Carbon, Ltd.  
201 Main Street, Suite 3000  
Fort Worth, Texas 76102

Mr. Vernon A. Williams  
January 14, 2002  
Page 2

A description of the equipment covered by the document follows:

Eighty (80) covered hopper railcars SRCX 3101 through 3180 inclusive.

A filing fee of \$28.00 is enclosed. Please return the original, any extra copies not needed by the Surface Transportation Board for recordation and the enclosed copy of this letter, each stamped with your recordation number, in the enclosed self-addressed envelope to:

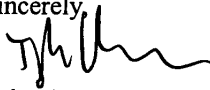
Tyler A. VanLonkhuyzen  
Seyfarth Shaw  
55 East Monroe - Suite 4200  
Chicago, Illinois 60603

A short summary of the document to appear in the index follows:

Interim Use Agreement between Thrall Trinity Freight Car, Inc. (formerly known as Thrall Car Manufacturing Company) and Sid Richardson, Ltd. dated as of December 17, 2001, and covering eighty (80) covered hopper railcars SRCX 3101 through 3180 inclusive.

Thank you for your assistance with this matter.

Sincerely,



Tyler A. VanLonkhuyzen

Enclosures

cc: Robert J. Sell  
Everett E. Engle

10313756

## INTERIM USE AGREEMENT

JAN 16 '02 10-35 AM

Interim Use Agreement dated as of December 17, 2001 between Thrall Car, Inc., formerly known as Thrall Car Manufacturing Company, an Illinois corporation with its principal offices located at 2521 State Street Chicago Heights, IL 60411 ("TTFC"), and Sid Richardson Carbon, Ltd., a Texas limited partnership with its principal offices located at 201 Main Street, Fort Worth, Texas 76102 ("Customer").

WHEREAS, TTFC and Customer have entered into Purchase Agreement Documents described on Exhibit C (collectively, the "Purchase Agreement") pursuant to which TTFC will manufacture and sell to Customer eighty (80), 70 ton, 4720 cubic foot, covered hopper railcars configured for carbon black service bearing car numbers SRCX 3101 through 3180 inclusive (the "Cars"); and

WHEREAS, Customer intends to finance its purchase of the Cars but the financing arrangements will not be completed by the scheduled delivery date for the Cars; and

WHEREAS, Customer desires to utilize the Cars before the financing arrangements are completed, and TTFC is willing to grant temporary possession of the Cars to Customer on the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. Customer agrees to accept possession of the Cars, solely as bailee, when they are delivered by TTFC FOT Clinton, Illinois pursuant to the Purchase Agreement. Upon delivery of each Car Customer or its representative shall execute a Certificate of Conformance in the form of Exhibit A attached hereto upon determination that such car is in conformance with the Purchase Agreement.

2. Customer's rights hereunder shall commence with respect to each Car on the date of delivery by TTFC and end when the purchase price therefor is paid by Customer or its financing source (the "Termination Date") without further action of the parties.

3. Until the Termination Date for each Car, title and ownership shall remain with TTFC and Customer's rights therein shall be solely that of possession, use and custody as bailee. Transfer of title shall occur only pursuant to a Bill of Sale duly executed and delivered by TTFC. The lien created by this Agreement shall automatically terminate with respect to each Car upon delivery of a Bill of Sale.

4. Customer shall pay to TTFC a security deposit of \$72,000.00 for each Car. Deposits for all 80 railcars (or so many of the railcars as will have been delivered by January 31, 2002) shall be payable on or before January 31, 2002, by wire transfer of federal funds to the following account:

Thrall Car Manufacturing Company  
Account No. 7366-1-01490  
Bank of America Illinois  
ABA No. 0710-0003-9  
231 South LaSalle  
Chicago, Illinois 60693

Deposits for railcars not delivered by January 31, 2002 shall be payable three business days from actual delivery dates.

If Customer's financing source takes title to a Car then the applicable deposit shall be refunded to Customer, and if Customer takes title to a Car then the applicable deposit shall be credited to Customer

5. Customer shall have risk of loss of all Cars delivered pursuant to this Agreement. Customer shall, at its expense, maintain in force public liability and property damage insurance with respect to the Cars in such amounts and with such terms as are comparable with those generally applicable to other railcars owned or leased by Customer.

6. Until the Termination Date for each Car, Customer shall keep and maintain the Car in good order and running condition, normal wear and tear excepted, and Customer shall at its option promptly repair, replace or pay to TTFC the purchase price if a Car is damaged or destroyed. Customer shall not modify any Car without the prior written approval of TTFC, and Customer shall immediately replace or restore any markings, which are removed, destroyed or defaced. Prior to delivery of each Car hereunder it shall be numbered with a road number and, in anticipation of the closing of Customer's financing, marked with the following legend in letters not less than one inch high:

**OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILES WITH THE SURFACE  
TRANSPORTATION BOARD**

Customer shall reimburse TTFC for all costs incurred by it as a result of placing such legend on the Cars if Customer's financing is not completed.

7. Customer shall not permit any liens or encumbrances of any kind, other than the usual interchange of traffic rules and the lien of this Agreement, to attach to any Car prior to the Termination Date for such Car.

8. Customer shall operate the Cars in accordance with all applicable laws, rules and regulations so long as Customer has possession pursuant to this Agreement.

9. Customer acknowledges and agrees that TTFC's execution of this Agreement and its delivery of Cars hereunder does not relieve Customer of its obligation to make payment in full for the Cars in accordance with the Purchase Agreement. If the Termination Date for any Car has not occurred before February 28, 2002, Customer's right of possession under this Agreement shall terminate unless Customer shall on that date pay to TTFC the purchase price for such Car.

TTFC may enter upon the premises of Customer and take immediate possession of any Cars for which payment in full has not been received on such date, in addition to exercising all other remedies available to it under law or in equity.

10. Prior to delivery of any of the Cars, TTFC shall be entitled to file a copy of this Agreement with the Surface Transportation Board of the Department of Transportation and to require Customer to take such other actions to protect TTFC's interest, as TTFC shall reasonably request. Simultaneously with its delivery of a Bill of Sale for each Car TTFC shall deliver to Customer or its financing source for filing a Termination of Agreement with respect to such Car in the form of Exhibit B attached hereto.

11. Customer shall indemnify and hold TTFC harmless from and against any and all claims, expenses, costs or liabilities, including but not limited to reasonable attorneys' fees, arising out of or in connection with Customer's possession, use or custody of the Cars pursuant to this Agreement or Customer's violation of any provisions of this Agreement or the Purchase Agreement. Customer shall pay all taxes (excluding any taxes measured by the net income of TTFC), fines, charges and penalties that may accrue or be assessed or imposed upon the Cars or upon TTFC as owner of the Cars while Customer has possession, use or custody pursuant to this Agreement.

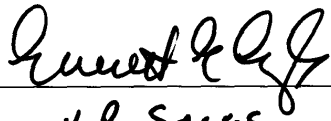
12. Customer acknowledges that it takes possession of the Cars subject to the provisions of the Purchase Agreement, including those relating to warranties, remedies and limitation of liability. The warranty period and any other time period set forth in the Purchase Agreement shall commence on the date of execution of a Certificate of Conformance.

13. Customer and TTFC each represent and warrant to the other that (i) the execution and delivery of this Agreement have been authorized by all necessary corporate action and do not and will not contravene or constitute a default under the provisions of any agreement or instrument binding upon it or any of its property, (ii) this Agreement constitutes a valid and binding obligation of it enforceable in accordance with its terms, subject to applicable insolvency, bankruptcy or moratorium laws and general principles of equity and (iii) all governmental authorizations, approvals or exemptions required of it for the execution and delivery of this Agreement or for the validity and enforceability of this Agreement against it have been obtained. Customer represents and warrants to TTFC that the rights of TTFC contained in this Agreement and the title of TTFC to the Cars are, and will be through the Termination Date, senior to the lien of any mortgage, security agreement or other instrument binding upon Customer or any of its property.

14. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to the conflict of law principles thereof.


15. This Agreement may be executed in multiple counterparts which taken together shall constitute a single instrument.

THRALL TRINITY FREIGHT CAR, INC.

By:   
Title: V.P. Sacks

SID RICHARDSON CARBON, LTD.

By: SRCG GENPAR, INC., its general partner

By:   
Title: V.P. Fin & Mktg Serv

10310444.1

STATE OF Illinois )  
 ) §§  
COUNTY OF Cook )

On the 3rd day of January, 2002 before me personally appeared Everett E. Engle, to me known who, being by me duly sworn, stated that he is Vice President, Sales of Thrall Trinity Freight Car, Inc., that the foregoing instrument was executed on behalf of such corporation, and he acknowledged that the execution of the foregoing instrument was the act and deed of such corporation.

Tereza F. Toczydlowski  
Notary Public

My commission expires: 1-24-05



STATE OF TEXAS )  
 ) §§  
COUNTY OF TARRANT )

On the 3<sup>rd</sup> day of January, 2002 before me personally appeared Herb A. Taulove, to me known who, being by me duly sworn, stated that he is Vice President of Mid Richardson Carbon Co., that the foregoing instrument was executed on behalf of such corporation, and he acknowledged that the execution of the foregoing instrument was the act and deed of such corporation.

Phyllis A. Vaughan  
Notary Public

My commission expires: 10-14-2005





**EXHIBIT A**

**CERTIFICATE OF CONFORMANCE**

The undersigned, a duly authorized inspector for \_\_\_\_\_ ("Customer"), hereby certifies that the units of railroad equipment described below have been inspected by the undersigned on behalf of Customer and have been found to be completed in conformance with the requirements and provisions of Customer.

Description of Car: \_\_\_\_\_

Manufacturer: Thrall Trinity Freight Car, Inc.

Quantity: \_\_\_\_\_

Car Numbers: \_\_\_\_\_

Date of Inspection: \_\_\_\_\_, 200 \_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Authorized Representative

## **EXHIBIT B**

### **TERMINATION OF AGREEMENT**

Termination of Agreement dated \_\_\_\_\_, 200\_\_ between Thrall Trinity Freight Car, Inc., an Illinois corporation with its principal offices located at 2521 State Street Chicago Heights, IL 60411 ("TTFC"), and Sid Richardson Carbon Company, a \_\_\_\_\_ corporation with its principal offices located at 201 Main Street, Fort Worth, Texas 76102 ("Customer").

WHEREAS, TTFC and Customer are parties to an Interim Use Agreement dated December 27, 2001 (the "Agreement") with respect to eighty (80) 70 ton, 4720 cubic foot covered hopper railcars, configured for carbon black service bearing car numbers SRCX 3101 through 3180 inclusive manufactured by TTFC for Customer (the "Cars"); and

WHEREAS, the Agreement was duly filed for recordation with the Surface Transportation Board of the Department of Transportation (the "Board") on \_\_\_\_\_ 200\_\_ at \_\_:\_\_.m. and given Recordation Number \_\_\_\_\_; and

WHEREAS, TTFC and Customer desire to terminate the Agreement with respect to certain of the Cars and to record such termination with the Board;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, receipt of which is acknowledged, the parties hereby agree as follows:

1. TTFC and Customer hereby terminate the Agreement, effective \_\_\_\_\_, 200\_\_, with respect to the Cars listed on Schedule 1 attached hereto; provided, however, that nothing contained in this Termination of Agreement shall affect the rights and liabilities of the parties under the Agreement with respect to acts, events or omissions occurring on or prior to the date hereof.
2. Customer shall record this Termination of Agreement with the Board in order to release any lien created by or arising out of the Agreement with respect to the Cars listed on Schedule 1.
3. Nothing contained herein shall be construed to terminate the Agreement with respect to any Cars other than the Cars listed on Schedule 1.

4. This Termination of Agreement may be executed in multiple counterparts which taken together shall constitute a single instrument.

THRALL TRINITY FREIGHT CAR, INC.

By \_\_\_\_\_

Title: \_\_\_\_\_

SID RICHARDSON CARBON COMPANY

By \_\_\_\_\_

Title: \_\_\_\_\_

10310444.1

STATE OF )  
 ) §§  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ before me personally appeared \_\_\_\_\_, to me known who, being by me duly sworn, stated that he is \_\_\_\_\_ of \_\_\_\_\_, that the foregoing instrument was executed on behalf of such corporation, and he acknowledged that the execution of the foregoing instrument was the act and deed of such corporation.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## **SCHEDULE 1**

Description of Car: \_\_\_\_\_

Quantity: \_\_\_\_\_

Car Numbers: \_\_\_\_\_

## **EXHIBIT C**

### **Purchase Agreement Documents**

1. Letter Dated 6/27/01 from Everett E. Engle of Thrall Car Manufacturing Company to Doug Richards of Sid Richardson Carbon Company
2. Specification LO-4720-00-Q127A dated 1/5/01, as amended from time to time
3. Specialty List dated 1/5/01, as amended from time to time
4. General Arrangement (4) SK-001219, as amended from time to time
5. Engineering Standards 325.38AP, 325.01AP and 325.03AP, as amended from time to time
6. Terms and Conditions dated 1/5/01